



*Evaluation of Permanent Impairment* (A.M.A., *Guides*)<sup>1</sup> and establishing the date on which he had reached maximum medical improvement. It afforded him 30 days to submit the requested medical evidence.

OWCP's September 7, 2017 correspondence was returned and marked "RETURN TO SENDER." Appellant subsequently advised OWCP of his new address. By letter dated October 18, 2017, OWCP acknowledged receipt of appellant's change of address request and, on that same day, it resent the development letter to his new address. Its October 18, 2017 correspondence was returned and marked "RETURN TO SENDER."

By decision dated November 27, 2017 decision, OWCP denied appellant's claim for a schedule award, finding the evidence of record was insufficient to establish permanent impairment of a scheduled member or function of the body due to the January 7, 2014 employment injury. It noted that he had not responded to the September 7 and October 18, 2017 development letters.

The Board has duly considered the matter and finds that this case is not in posture for decision. On October 18, 2017 OWCP mailed appellant a properly addressed development letter. The mailbox rule provides that proper and timely mailing of a document in the ordinary course of business raises a rebuttable presumption of receipt by the addressee.<sup>2</sup> However, as a rebuttable presumption, receipt will not be assumed when there is evidence of nondelivery.<sup>3</sup> The record in this case contains direct evidence of nondelivery of the October 18, 2017 development letter. Although properly addressed to appellant at his address of record, the U.S. Postal Service returned the letter to OWCP as undeliverable. OWCP received the nondelivered development letter on October 23, 2017. Consequently, appellant has rebutted the presumption of receipt of the October 18, 2017 development letter under the mailbox rule.<sup>4</sup>

As appellant did not receive the October 18, 2017 development letter, the case will be remanded to OWCP to issue a new development letter followed by a *de novo* decision on appellant's schedule award claim.

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<sup>1</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

<sup>2</sup> See *James A. Gray*, 54 ECAB 277 (2002).

<sup>3</sup> *L.M.*, Docket No. 16-0144 (issued March 22, 2016).

<sup>4</sup> See *M.U.*, Docket No. 09-0526 (issued September 14, 2009) (the Board found that presumption of receipt of a Notice of an Oral Hearing was rebutted when the envelope enclosing the Notice of an Oral Hearing was returned and marked Return to Sender and remanded the case for reissuance of the Notice of an Oral Hearing).

**IT IS HEREBY ORDERED THAT** the November 27, 2017 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further action consistent with this decision of the Board.

Issued: April 18, 2019  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board